Calex Corporation *and* United Steelworkers of America, AFL–CIO, CLC. Case 8–CA–27494

January 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 23, 1996, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions with a brief in support and a reply brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

1. The Respondent has excepted to the judge's finding that it violated Section 8(a)(5) of the Act by failing and refusing to meet with the Union at reasonable times for the purposes of collective bargaining as required under Section 8(d) of the Act. The Respondent contends that the judge based his finding of a violation solely on the number of bargaining sessions that occurred during the 15 months following the Union's certification and asserts that the judge should instead have evaluated its conduct within the totality of the circumstances. Viewed in this light, the Respondent contends that it satisfied its bargaining obligation because it met with the Union on 20 occasions during 15 months, that those sessions were mostly full-day bargaining sessions at which the parties made progress in bargaining, and that by the end of the 15 months the parties had reached agreement on approximately 75 percent of the contract. Thus, the Respondent contends that "[b]y failing to submit any evidence that the parties are not making adequate progress towards an agreement, General Counsel necessarily failed to establish that Calex has negotiated in bad faith." We find the Respondent's argument without merit for the following reasons.

Contrary to the Respondent's assertions, the judge, in finding in effect that the Respondent engaged in bad-faith bargaining by employing delaying tactics in its negotiations with the Union,[3] relied not only on the fact that the parties held only 19 bargaining sessions in the 15 months following the Union's certification in November 1994,[4] but also on the number of scheduled meetings which the Respondent canceled, the Respondent's arbitrary decision to limit the number of meetings to one a month prior to the strike that commenced May 1, 1995,[5] the Respondent's repeated refusal of the Union's requests for more frequent meetings, and certain statements which the Respondent's negotiator made during the course of bargaining.

Based on such overall conduct on the Respondent's part during the initial months of bargaining, the judge found, and we agree, that the Respondent's conduct evidenced a "pattern of delay" in negotiating which was clearly evident prior to the strike and continued thereafter. Thus, as the judge found, from the date of the first scheduled meeting of January 27, which the Respondent canceled, to the commencement of the strike on May 1, the parties in fact met only three times, while during the same period the Respondent canceled at least three scheduled meetings. In finding a "pattern of delay," however, the judge relied not only on the number of meetings which the parties held, but also on the facts that the Respondent's negotiator, Alan Fry, initially told the Union's negotiator, Arlette Gatewood, at the parties' first negotiating session of February 8, that he could only meet once or twice a month, and that Fry repeatedly refused the Union's repeated requests for more frequent meetings prior to the commencement of the strike on May 1.[6]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We also find no merit in the Respondent's allegations of bias and prejudice on the part of the judge. Thus, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated a bias against the Respondent in his analysis or discussion of the evidence.

[2] We shall modify the judge's recommended Order to include provisions that are in accord with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). We shall also modify the judge's recommended Order by replacing his recommended provision for the reinstatement of the unfair labor practice strikers with the Board's customary provision for such reinstatement. See, e.g., *Grondorf, Field, Black & Co.*, 318 NLRB 996, 997 (1995).

[3] As explained in *Nursing Center at Vineland*, 318 NLRB 901, 905 (1995):

> In assessing whether an employer has engaged in good-faith bargaining, the Board examines the parties' overall conduct during negotiations. The Board has found certain conduct, e.g., delaying tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass a union, failing to designate an agent with sufficient bargaining authority, to be indicative of a lack of good faith.

[4] Although the Respondent asserts that the parties held 20 negotiating sessions during this period, we agree with the judge that the June 12, 1995 meeting between the parties to discuss strike-related matters was not a contract-bargaining session. Indeed, the Respondent essentially admits this when it states in its brief that "the parties didn't discuss any contract proposals" at the June 12 meeting.

[5] All dates hereafter refer to 1995 unless otherwise stated.

[6] For the reasons set out below, we agree with the judge that the Respondent's refusal to meet more often was a cause of the strike and that the strike was an unfair labor practice strike from its inception.

That the Respondent's pattern of delay began prior to the strike and continued after the strike began is further evidenced by the fact that, after the complaint issued on October 6, Fry told Gary Steinbeck, Gatewood's successor as negotiator for the Union, that he would not agree to more than three meetings a month because Gulshan Arora, the Respondent's president, would only agree to have him meet 3 days a month. Noting that Fry had testified that Arora had set a limit on the number of meetings that could be held each month, the judge inferred, and we agree, that Arora had initially limited the number of meetings that could be held to one a month prior to the strike. Indeed, although not specifically found by the judge, we infer from Fry's May 4 letter to Gatewood after the strike began, in which he stated that he would be willing to meet every other week if the strike ended immediately and if it were not resumed while the parties were meeting with this frequency, that Arora had instructed Fry that meetings could be held every other week if the employees returned to work immediately. Thus, it is clear, as the judge in effect found, that the Respondent controlled the tempo of the negotiations and only agreed to increase the number of meetings from the minimum of one a month to two a month and then three a month because of the pressure of outside circumstances, i.e., the onset of the strike and the issuance of the complaint.

Further, as the judge found, the Respondent's purpose in insisting on meeting only once a month was not to reach an agreement with the Union within a reasonable period of time, but to engage in purposeful delay. Support for such a finding, as the judge explained, is found in Fry's September 8 statement to Steinbeck, in refusing Steinbeck's request for more frequent meetings, that Fry could "beat" an unfair labor practice charge by meeting only once a month.[7]

As noted above, in finding this violation, the judge also relied on the fact that the Respondent canceled a number of negotiating sessions, often at the last minute, because Fry, who flew his own airplane, was unable to make the flight from Cincinnati, Ohio, where he lived, to Youngstown, Ohio, a distance of approximately 300 miles, or had other scheduling problems. Although the Respondent correctly points out that the judge did not find that the Respondent intentionally canceled scheduled sessions, the judge also found,[8] and we agree, that the Respondent could not avail itself of the "busy negotiator" defense as an excuse for its failure to meet at reasonable times. In this regard, it is well settled that an employer's chosen negotiator is its agent for the purposes of collective bargaining, and that if the negotiator causes delays in the negotiating process, the employer must bear the consequences. See, e.g., *O & F Machine Products Co.*, 239 NLRB 1013, 1018–1019 (1978); *Barclay Caterers*, 308 NLRB 1025, 1035–1037 (1992).

Finally, given the pattern of purposeful delay which the Respondent employed here to thwart the bargaining process, the Respondent cannot now persuasively defend against a charge of bad-faith bargaining by asserting that the parties had reached agreement on approximately 75 percent of the contract after 15 months of bargaining. For if the Respondent had agreed to meet more than the limited number of times per month that Arora arbitrarily permitted, and if the Respondent had agreed to the Union's requests for more frequent meetings, as it should have if the Respondent had been sincerely desirous of reaching an agreement, the parties might have reached agreement in less time. *Rhodes St. Clair Buick*, 242 NLRB 1320, 1323 (1979). In sum, we agree with the judge's conclusion, which was based on an examination of the Respondent's overall conduct in bargaining, that the Respondent violated Section 8(a)(5) by failing and refusing to meet at reasonable times with the Union for the purpose of collective bargaining.

2. The Respondent has also excepted to the judge's finding that the strike which began on May 1 was caused by the Respondent's refusal to meet more than once a month and was therefore an unfair labor practice strike from its inception. The Respondent contends, in effect, that the cause of the strike was the initial delay in bargaining from late November 1994 to late January 1995 and that since it was the Union, not the Respondent, that caused this initial delay, the judge should not have found that it was the Respondent's refusal to bargain that caused the strike. The Respondent further contends that the judge erred by finding that the Union had never misled the Respondent's employees into believing that it was the Respondent which had caused this initial delay. While we agree with the Respondent that the Union caused the initial delay in bargaining and that the judge, to the extent explained below, erred in finding that the Union never misled the employees into believing that it was the Respondent that caused this initial delay, we find for the reasons set out below that this mistake does not affect the judge's finding that the strike was an unfair labor practice strike from its inception.

[7] Given the Respondent's initial refusal to meet more than once a month and its overall conduct which evidenced a "pattern of delay," we find that such conduct belies Fry's statement, contained in his March 21 letter to Gatewood, that Fry "recognize[d] our obligation to meet with you as often as necessary to bargain in good faith to reach a contract, and I will comply with this requirement."

In finding that the Respondent engaged in delaying tactics, the judge does not appear to have relied, nor do we, on employee Irving Caminero's testimony that prior to the November 1994 election Arora had told him that he did not want the Union and that it would come in over his dead body.

[8] See fn. 15 of the judge's decision.

As the judge explained in his decision, the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees on November 29, 1994. Gatewood then requested that bargaining not begin until after the holidays. Fry agreed and, in his December 13 letter to Gatewood, he set out several dates in January when he could meet. January 27 was the last date listed. Fry indicated that he could only meet on one day in January and requested that Gatewood pick one date from those set out in the letter. Gatewood chose January 27. In his February 28 letter updating the Respondent's employees on the status of the negotiations, while Gatewood erroneously stated that he did not contact the Respondent until January, he did make it clear that the Union, not the Respondent, was responsible for postponing negotiations until January "[b]ecause of the Thanksgiving and Christmas holidays." Gatewood added, however, that "[t]he first date Mr. Fry would schedule was January 27, 1995." Thus, it is clear, as the judge found, that it was the Union that was responsible for the initial delay in bargaining and that, contrary to the judge's further finding, Gatewood misled the Respondent's employees into believing that it was the Respondent which was responsible for a delay in bargaining in January. Contrary to the Respondent's assertion, however, it is also clear that the Union assumed responsibility for not scheduling meetings in December 1994. In any event, we find the judge's error in this regard does not affect his finding that the strike was an unfair labor practice strike, because we agree with him that it was the Respondent's refusal to meet more than once a month prior to the strike, not the initial delay in bargaining, which caused the strike.

In this regard, we emphasize that in his February 28 letter, Gatewood also explained to the employees that it was the Respondent which had canceled the meetings scheduled for January 27 and February 2, and that the parties had therefore met for the first time on February 8. Gatewood truthfully explained that although he had tried to schedule meetings 2 or 3 days in a row so that the parties could work out an agreement, Fry had replied that he could not meet again until March 8 and would give no other date for meeting. Gatewood added that when the parties met on March 8 he would make it known that the parties should meet more than once a month. Finally, Gatewood emphasized "*that it is not the Union's fault that meetings are not taking place*," and that if the Respondent was willing to bargain in good faith, the Union was ready "to meet nights, days or weekends to try and reach an agreement." (Emphasis in original.) Thus, we find that the thrust of Gatewood's letter was to explain why more meetings were not taking place at the time the letter was written, late February, rather than to assign blame for the initial delay in bargaining. We also emphasize that Gatewood truthfully explained that the Respondent was responsible for the refusal to meet more often. We observe further that the Respondent canceled the March 8 meeting, the last meeting scheduled prior to March 18 when the employees voted to authorize a strike if the Union's officers were not satisfied with the progress of the negotiations. As to the progress of negotiations between March 18 and the commencement of the strike, we note that the Respondent continued to refuse the Union's requests for more frequent meetings and that, at the parties' only meeting in March, the Respondent agreed to meet only once in April, and that at the April meeting the Respondent agreed to meet only once in May. Thus, the Respondent's "pattern of delay" discussed above was clearly established even prior to the strike vote and certainly by the commencement of the strike on May 1. It was this pattern of delay that caused the strike.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Calex Corporation, Campbell, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following paragraphs for paragraph 2(b).

"(b) Offer the strikers, on their unconditional application to return to work, immediate and full reinstatement to their former positions or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, persons hired on or after May 1, 1995, and make them whole, with interest, for any loss of earnings or other benefits they may suffer as a result of the Respondent's refusal, if any, to reinstate them in a timely fashion.

"(c) Within 14 days after service by the Region, mail to each striking employee at his or her home address and post at its facility in Campbell, Ohio, copies of the attached notice marked 'Appendix.'[9] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 1995."

2. Insert the following paragraph as new paragraph 2(d).

"(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with United Steelworkers of America, AFL–CIO, CLC, by failing to meet with the Union at reasonable times for purposes of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over wages, hours, and working conditions of our bargaining unit employees and, if an agreement is reached, WE WILL embody such an agreement in writing.

WE WILL comply with the Union's request for more frequent bargaining sessions and we recognize that the certification year has been extended for 10 months.

WE WILL offer the strikers, on their unconditional application to return to work, immediate and full reinstatement to their former positions or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, persons hired on or after May 1, 1995, and WE WILL make them whole, with interest, for any loss of earnings or other benefits they may suffer as a result of our refusal, if any, to reinstate them in a timely fashion.

CALEX CORPORATION

Susan E. Fernandez, Esq., for the General Counsel.
Christopher J. Newman and *Richard N. Selby, Esqs.*, of Youngstown, Ohio, and *Alan J. Fry, Consultant Esq.*, of Cincinnati, Ohio, for the Respondent.
Mark A. Rock, Esq., of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Cleveland, Ohio, on February 12 and 13, 1996. The charge was filed by the United Steelworkers of America, AFL–CIO, CLC (the Union) on June 20, 1995,[1] and the complaint was issued on October 6.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Calex Corporation (Respondent or Calex), is a corporation which engages in the manufacture of aluminum products at its facility in Campbell, Ohio. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act) and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues for Determination*

On November 29, 1994, the Union was certified by the Board as the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including all remelt employees, press operators, packing and shipping employees, quality control employees, and all truck drivers, employed at the Employer's facility located at 2415 Wilson Ave., Campbell, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The complaint alleges that Respondent has violated Section 8(a)(5) and (1) of the Act since about January 24, and continuing to date, by failing and refusing to bargain with the Union in good faith and by failing to meet with the Union at reasonable times for purposes of collective bargaining. For ready reference, I have set forth below a summary of all meetings held between Respondent and the Union from

[1] All dates are in 1995 unless otherwise indicated.

the date of certification to the date of hearing, together with the duration of each meeting.

DATE	TIME
February 8, 1995	9 a.m.–4 p.m.
March 27, 1995	9 a.m.–4:30 p.m.
April 25, 1995	9 a.m.–4:30 p.m.
May 17, 1995	10 a.m.–6 p.m.
June 7, 1995	9 a.m.–5 p.m.
June 12, 1995	11:30 a.m.–3:40 p.m.[2]
June 22, 1995	9 a.m.–4 p.m.
July 6, 1995	9 a.m.–4:15 p.m.
September 8, 1995	9:30 a.m.–5 p.m.
October 11, 1995	10:05 a.m.–5:10 p.m.
October 23, 1995	99:30 a.m.–5:20 p.m.
October 24, 1995	9 a.m.–4:40 p.m.
November 20, 1995	9:30 a.m.–4:20 p.m.
November 27, 1995	9:30 a.m.–5 p.m.
November 28, 1995	9 a.m.–5:10 p.m.
November 29, 1995	9 a.m.–2:20 p.m.
December 14, 1995	9:30 a.m.–4:40 p.m.
December 15, 1995	9 a.m.–4 p.m.
January 22, 1996	9:30 a.m.–4 p.m.
January 23, 1996	9 a.m.–3:30 p.m.

The complaint also alleges that commencing on May 1 Respondent's unit employees engaged in a strike of Respondent's facility which continues to date. It is alleged that this strike was caused by and/or prolonged by Respondent's failure and refusal to bargain in good faith and is thus an unfair labor practice strike.

B. *The Parties' Bargaining History*

1. The delay between certification and the first negotiating session

Arlette Gatewood is a field staff representative with the Union and has worked for the Union for 18 years. He is experienced in contract negotiations on behalf of the Union and has negotiated about 150 to 200 contracts, mostly renewals, during his history with the Union. According to him, Calex employs about 110 to 115 unit employees. Respondent has been in business for over 75 years and was formally owned by local residents of the Campbell area. At all times material to this proceeding, it has been owned and managed by Gulshan Arora.

Following certification on November 29, 1994, Gatewood requested that bargaining begin for an initial contract in a letter dated November 30, 1994. Respondent, through its labor consultant, Alan Fry, responded in a letter dated December 13, 1994, suggesting the parties meet beginning January 13, 16, 18, 23, 26, or 27.[3] Though several dates are listed, Fry indicated he could only meet on one day in January. A day or two after he received Fry's letter, Gatewood phoned Fry and they agreed to begin negotiations on January 27. According to Fry, Gatewood did not ask for more than one meeting in January nor did he complain about the passage of time between the certification and the first scheduled meeting. Gatewood confirmed this conversation in a letter to Fry dated December 16, 1994. The initial delay in commencing negotiations was the fault of Gatewood, who evidently had a vacation planned during December. No reason was given for Gatewood selecting the latest date in January to begin negotiations.

2. Respondent cancels the first two scheduled meetings and announces its refusal to meet more than once a month to negotiate

By letter dated January 10, Gatewood forwarded to Fry an initial union contract proposal and noted that the Union has a policy of reaching a contract within 90 days of certification. He also suggested the parties select several meeting dates to avoid lengthy negotiations. Two or three days prior to January 27, Gatewood received a phone call from Fry who told him that the Respondent's owner, Arora, was out of the country and that Respondent's selected negotiator, Plant Manager Rudy Zelina, had made a sudden announcement that he was retiring. Fry indicated he did not know who Arora would select to replace Zelina as company negotiator. According to Gatewood, the meeting for January 27 was postponed to February 2, which assumed Arora would be back in this country by that date. Following this conversation, Gatewood wrote his superior, Dan Martin, informing him of the delay in beginning negotiations and raising the question of whether Respondent was engaging in stalling tactics. Subsequently, Fry called Gatewood and informed him that Arora had not returned and they rescheduled the initial meeting for February 8. Arora has not attended any contract negotiations between the parties. Fry testified that Arora returned to the country on January 29. Fry contends that the February 2 date was the earliest date that it would have been possible to meet and was not a tentative meeting date and thus was not canceled by him. I do not credit this testimony. Gatewood wrote to Fry on February 13 and, inter alia, complained about the cancellation of the February 2 date. I cannot find that Respondent ever challenged this assertion in any written or verbal response until this hearing.

The February 8 date was kept and the parties met for the first time. Representing the Union were: Local President Gatewood, Local Vice President Mike Duraney, Ray Mitchell, Local Recording Secretary Jim Lagamba, Financial Secretary Rich Stiles, and Local Treasurer Steve Zetekovich. Representing Respondent were: Alan Fry and John Brace, the new plant manager. This initial meeting lasted from 9 a.m. until about 4 p.m. The parties discussed the Union's proposal in general terms. According to Fry's bargaining notes, the Company's negotiating team came prepared to discuss the proposal Gatewood had sent on January 10. They spent the day bargaining about the articles on the first 15 pages (out of a total of 34 pages) of the Union's proposal. They made fair progress, but could have made more progress according to Fry, if Gatewood had been prepared. Fry contends that in many instances Gatewood could not explain his proposed contract language. According to Fry, Gatewood said he was

[2] This meeting involved only discussion of ways to end the strike and did not involve contract negotiations.

[3] Alan Fry is a management consultant who handles labor and employee relations, benefit analysis, compensation plans, quality management development, long range planning, and collective bargaining. He was first retained by Calex in 1992 and aided Respondent in two union campaigns. Prior to the certification of the Steelworkers, Calex never had a union representing its employees. Following the Union's certification, Fry was given the job of negotiating an initial contract. He has represented 12 to 15 other companies in such negotiations in the past.

not very familiar with the proposal and that most of it had come from a contract he had not negotiated. The only explanation he offered was that certain sections were standard contract language and that he would find out more about the sections so he could answer Fry's questions at a future meeting. He made this comment about the Civil Rights Committee, subcontracting out work, seniority, voluntary layoff, and grievance and arbitration procedure.

At the meeting on February 8, Gatewood attempted to get as many dates scheduled for subsequent meetings as he could. He testified that he was involved with representing employees at about 17 companies and needed firm scheduling. Gatewood suggested that the parties meet three or four times a week. Fry told him that he was willing to meet only 1 or 2 days a month, and the parties agreed to meet next on March 8. According to Gatewood, Fry said this was the first day he was free to meet. Although Fry testified that he is a busy man, he did not introduce any evidence that would prove that he had prior commitments which would have precluded him from meeting on more than a day in February or in March, April, or May, which was the only frequency to which he would agree. I believe the true reason that Fry did not meet more often is found in a later statement he gave to another negotiator for the Union, Gary Steinbeck, who replaced an ailing Gatewood in August. Steinbeck testified that in response to his complaints to Fry about Fry's later unwillingness to meet more than three times a month, Fry told Steinbeck that he would not agree to more than three because Respondent's owner, Arora, would only agree to have him meet 3 days a month. Fry did not deny this assertion, instead testifying that he said that Arora and he had a general understanding as far as how often meetings would take place and there was a limit to the number of times that Respondent would be willing to meet in any one month. Fry did not remember putting a specific number on this limitation on frequency of meetings. I believe this limitation was clearly one meeting a month until the strike occurred.

Arora did not testify in this proceeding and no explanation was offered by the Respondent for this arbitrary limitation on the frequency with which Respondent would meet. Respondent's counsel inferred in some of his questions that economics may have been behind the limitation. But no evidence was offered to support this inference and it does not make sense in any case. Whatever it cost to have Fry negotiate for the Company, it would be the same if Fry met four times in 1 week rather than four times in 4 months. There would also be a savings in travel expense. Respondent did not offer any other legitimate reason for its refusal to meet more than once a month prior to the strike, and I find that the only inference that can be drawn in these circumstances is that it was trying to delay reaching a contract either to put off the inevitable or to cause disenchantment with the Union among the employees.

Further evidence of Arora's dislike of the Union was given by Irving Caminero, a bargaining unit member who is on strike. He testified that prior to the election he attended a meeting where the employees were addressed by Fry. Caminero asked Fry a question about the Union or unions in general and Fry did not answer. After the meeting, Caminero was called into Arora's office. According to Caminero, Fry was present drinking coffee. Arora asked Caminero if he liked the Union and had he belonged to a union previously. Caminero answered yes. According to Caminero, Arora then said he did not want the Union in his shop now or ever and "[it would come in] over his dead body." Fry testified that he never heard Arora make that comment in any meeting he ever attended or any time he has been in his company. He further testified that he was not present at a meeting in Arora's office when Arora told Caminero that he did not want a union and that a union would come in over his dead body. I credit Caminero's testimony. He is a current employee of Respondent and has nothing to gain by lying about this matter. Arora could have denied the statement but chose not to testify.

On February 13, Gatewood wrote to Fry confirming the March 8 date and raising his concerns about the length of time between meetings, again pointing out the Union's policy about securing a contract within 90 days of certification. He asked in this letter that the parties meet for several days in a row beginning March 8. Fry responded in a letter dated March 6, in which he confirmed the meeting date of March 8 without mentioning the matter of meeting for more than 1 day. He also supplied some information requested by Gatewood and requested a copy of the portion of the Union's constitution concerning plant safety committees.

3. The unit authorizes its negotiating team to call a strike

On February 28, Gatewood also sent a letter to all unit members regarding contract negotiations. In this letter, he noted that negotiations were not scheduled to start until January because the Thanksgiving and Christmas holidays immediately followed certification. He erroneously stated that he did not contact Fry initially until January. Gatewood then noted the problems with scheduling the first meeting and the problems he had had in getting Fry to meet for more than 1 day at a time, separated by lengthy periods. He assured the members that he would attempt to get Fry to meet more often.

On March 8, at about 9:15 a.m., 15 minutes after the scheduled start of the second negotiating meeting, Gatewood and the assembled union negotiating team received a call from Brace, who told him that Fry could not fly to Youngstown from his home in Cincinnati because of bad weather. Fry travels by private plane and, as will be noted, delayed or canceled several meetings because of problems associated with either his plane or weather conditions. Youngstown is about 300 miles and 5-1/2 hours by car from Cincinnati. In this conversation Brace indicated that Fry would contact Gatewood and reschedule the meeting. Fry testified that the meeting was postponed because an unexpected snow storm made travel impossible. He said that at about 12:30 p.m. he called Gatewood's office and left a message on his answering machine for him to call back to reschedule the meeting. Gatewood evidently never received this message.

Following this cancellation, the Union scheduled a meeting with unit members to discuss the lack of progress in the negotiations. This meeting was held March 18. At the meeting, Gatewood gave an overview of the negotiations to date. According to Gatewood, the members were concerned about why negotiations were taking so long. They also discussed decertification and possibly striking. A motion was made to take a strike vote and it passed, authorizing the Union's officers to call a strike if they were not satisfied with the

progress of negotiations. Gatewood's notes of this meeting also indicate that filing charges with the Board for failing to bargain in good faith was mentioned.[4]

Dan Martin was union district director until June 1, when he became an assistant to the Union's International president. He testified that Gatewood kept him appraised of the status of negotiations from their commencement. Martin decided to call the March 18 meeting because of the lack of progress in negotiations. He was upset with Gatewood for waiting until the end of January to start them and then was suspicious as the Employer hired a consultant from another area to represent it in negotiations. When he learned that the Company was only going to agree to one meeting a month and that meetings were being canceled, he believed it was time to meet with the membership. At the meeting he told the members that they were having trouble getting the Respondent to schedule meetings and he did not feel the employer was bargaining in good faith. He told them that in his opinion the Respondent had hired a union buster and was engaged in surface bargaining. He asked for the right to call a strike stating that such authority might put pressure on the Employer to agree to more meetings.

4. The parties' meetings between the strike authorization and the strike of May 1

Fry wrote Gatewood on March 21, saying he had called Gatewood on March 8 and left a message on his answering machine asking Gatewood to return the call to reschedule the second meeting. Fry noted that Martin had called him and he learned that Gatewood had not received this message. Fry then complained that Martin had threatened him and cursed at him in their telephone conversation, noting that he would not meet if such behavior was repeated. He also wrote: "I recognize our obligation to meet with you as often as necessary to bargain in good faith to reach a contract, and I will comply with this requirement."[5] Fry also noted he was free to meet on March 28.

Fry later called Gatewood and asked that the March 28 date be changed to March 27, and it was. Gatewood, however, was only available for half a day on that date. At the meeting held March 27, Fry for the first time presented the Union with the Company's bargaining proposals. Fry admitted in response to a question by the General Counsel that he had not ascertained the existing terms and conditions of employment of all affected employees before preparing this proposed contract. Fry testified that at the meeting a discussion of the remainder of the Union's proposal was accomplished, as was a review of the Company's proposed contract. He further noted that both sides made proposals and counterproposals on overtime, reporting allowance, job classifications, shift differentials, holidays and holiday pay, vacation, leave of absence, safety and health, bereavement, jury duty, insurance, workers' compensation, and severance allowance. Agreement was reached on part of the safety and health article and all the jury duty article.

At the meeting Gatewood also brought up the topic of the frequency or lack of it with respect to negotiating sessions. He asked Fry for three or four sessions, commencing March 31 and continuing to April 4. Fry told Gatewood he would not be available on those dates. Gatewood then asked Fry if they could meet as many as 10 days in April. Fry responded that he would be unavailable from April 4 to 16. Gatewood then amended his request to ask for 10 days in April, after April 16. Fry agreed only to meet one day in April, on April 25. Gatewood testified that at this point, he was getting concerned that they were not meeting with enough frequency to reach an agreement in an "equitable" time. Gatewood believes he informed Respondent of the strike vote at this meeting.

Following this meeting, Gatewood wrote Fry on March 28, accusing him of bargaining in bad faith by not agreeing to meet more than 1 day a month. Gatewood reiterated his request to meet 10 days in April. Gatewood wrote Fry another letter on March 30, noting that they had not specified a place for the April 25 meeting. He also asked that this meeting and all subsequent ones start at 9 a.m. and continue for an entire day.

Fry responded to these letters with one of his own dated April 4. In this letter, Fry expressed surprise at Gatewood's request for 10 meeting days in April. He pointed out that he had told Gatewood that he would be unavailable to meet in April until after April 16. He continued by telling Gatewood that he had offered to meet at a date in April earlier than April 25, but that Gatewood had selected April 25 from the dates offered by Fry. He then pointed out that Gatewood had failed to supply certain information and contract proposals requested by the Respondent. Fry did not offer to meet in April other than on April 25.

Gatewood responded to this letter by writing Fry on April 6. He asked Fry if he would be able to meet between April 6 and 16. He also asked for every free day Fry had in May and June in order to schedule 10 meeting days in each of those months. Gatewood wrote again to Fry the next day, April 7. In this letter, he took issue with Fry's assertion in Fry's April 4 letter that Gatewood made no objection to meeting only on April 25. He noted that Fry had offered to meet on April 18, but Gatewood had scheduling conflicts that day. Gatewood pointed out that he had asked to meet several days and Fry had stated he would meet only 1 day in April. He also took issue with Fry's suggestion that meeting 1 day a month was the best way to get a contract.

The parties met for the third time on April 25. According to Fry's notes, proposals, and counterproposals were exchanged for the preamble, recognition, coverage, checkoff and union shop, nondiscrimination, contracting out work, management rights, and civil rights committee. Agreement was reached on part of the preamble, intent and purpose, part of contracting out work, and part of management rights. During this meeting, the subject of additional meeting days was raised by Gatewood. According to Gatewood, Fry would only commit to 1 additional day in May and 2 additional days in June and July. Specifically, Fry agreed to meet May 17, June 7 and 22, and July 6 and 27. Gatewood again accused Fry of not bargaining in good faith and deliberately

[4] The Union did file a charge dated March 30 in which it alleges that Respondent was not bargaining in good faith. Neither Gatewood nor his superior, Dan Martin, seemed to have any knowledge about this charge, which was signed by an organizer for the Union. This charge was withdrawn after the filing of the charge in the instant case.

[5] I believe this statement, as well as one later made by Fry to the effect that the Respondent was bargaining frequently enough to beat an unfair labor practice charge is a clear indication that Respondent was engaging in purposeful delay and not bargaining in good faith.

stalling to aggravate the membership. Fry said he would meet only 1 day in May because he wanted time to study proposals. He wanted 3- to 4-week intervals between meeting to review material and because of commitments to other clients. Again I would note that no evidence was submitted by Fry to substantiate what commitments he may have had that would have precluded him from meeting more frequently. There is also no elaboration on what materials needed reviewing.

Following the meeting of April 25, Gatewood met with the other members of the Union's negotiating team to discuss a plan of action because of the lack of bargaining. They decided to call a strike on May 1 and on that date a strike commenced. Gatewood testified that the reason for the strike was Respondents failure to meet on a more frequent basis for bargaining. Gatewood testified that the strike could have been avoided if the Respondent had agreed to meet more frequently. Prior to the strike vote in March 1995, the Company had not changed the working conditions or wages of employees from those existing at the time of certification. Fry testified that Respondent was not given any advance warning that a strike would take place nor was it given any sort of ultimatum that it must meet more frequently or strike would take place.[6]

5. The negotiations in the summer of 1995

On May 2, Gatewood wrote to Fry. In this letter, he expressed his dissatisfaction with the current schedule of meetings and the unwillingness of Fry to meet more often. He asserted that the strike began because of this unwillingness to meet more often. He requested that Respondent get another negotiator if Fry was personally unable to meet more frequently and accuses Fry of attempting to avoid reaching an agreement. Gatewood again specifically requested the parties meet 10 days a month for the next 3 months to try to reach an agreement.

For his part, Fry continued to hold to his schedule and frequency of meetings. Fry called Gatewood on May 3. In this conversation the two men discussed the strike. Gatewood also asked for additional meeting days in May. Fry wrote Gatewood on May 4. In this letter, he stated:

> Yesterday . . . I explained the offer from the Calex Corporation to resume negotiations on Friday, May 12, 1995, and continue meeting every other week for at least 3 months if the strike ended immediately and is not resumed as long as we are meeting on this interval. It is my understanding that you would respond by the end of the day, but I have heard nothing from you and I have been advised that the strike is still going on. The offer stated above still stands, but only until 12 noon today. If the offer is not accepted by this time, it is withdrawn immediately.

Gatewood responded to this letter with one dated May 4 (all letters were faxed) in which he rejects the offer stating, "Your offer to meet only slightly more frequently (once every two weeks rather than once every three weeks) in return for an end to the strike is rejected." Gatewood then asked for more meeting dates and continues,

> We and the employees view your unwillingness to meet more frequently as evidence of your desire to avoid reaching an agreement. This strike will not be resolved without significant movement on the part of Calex. We once again request a ten per month schedule of meetings.

At about the same time, Gatewood sent to the membership another update on negotiations. This document, inter alia, states:

> Our efforts continue to get Calex to engage in serious negotiations. We are asking for 10 meetings a month; they have only agreed to meet on May 17, June 7, July 6 and 27.[7] We will never reach an agreement at a snail's pace like this, and it is clear that Calex has no present intention of reaching an agreement. If you have any doubt of this fact, just consider that in 3 full days of meetings, the company negotiator has only agreed-upon language for the Purpose and Intent clause of the contract. It seems we must continue to exert economic pressure for them to engage in serious negotiations. We had said that we will go back to work if they agree to negotiate only 6 times a month. But they have refused. So far they have only offered to meet two times a month. They are not serious yet.

The fourth bargaining session was held May 17 and was attended by the mayor of Campbell, Ohio, who attempted to aid the negotiations in most, if not all, subsequent meetings. The fourth meeting was scheduled from 9 a.m. to 5 p.m., but actually was held from 10 a.m. to 6 p.m. due to bad weather that delayed Fry's arrival. According to Fry's notes, proposals, and counterproposals were exchanged on the preamble, recognition, management rights, attendance and tardiness, seniority, contracting out work, nondiscrimination, voluntary layoffs, the grievance and arbitration procedure, hours of work, and overtime articles. Agreement was reached on recognition, a portion of seniority, portions of the grievance and arbitration procedure and a portion of the hours of work provision.

Gatewood asked for more meetings in June, but the Company stood by its offer to meet on June 7 and 22 only. At this meeting, the Union offered to end the strike if the Company would meet six times a month. Following this meeting, Gatewood put this offer in writing and sent it to Fry. Fry responded in a letter dated May 25. It states that the Company is bargaining in good faith and is meeting often enough to reach a reasonable agreement. It also states that the Company is willing to meet on the two June and two July dates scheduled earlier. It does not accept the Union's proposal to end the strike.[8]

[6] The Respondent continued to operate its facility during the strike, utilizing replacement workers and unit employees who crossed the picket line.

[7] Respondent had also agreed to meet on June 22.

[8] Beginning shortly after the strike, certain of the striking employees engaged in alleged picket line misconduct, which became the subject of a number of court restraining orders, injunctions, and contempt proceedings that lasted into June. At the hearing, for the first time, Respondent suggests that it cannot be found to be bargaining in bad faith during this approximate 1- to 1-1/2-month period, citing *Laura Modes*, 144 NLRB 1592 (1963). I do not believe this argu-

The parties met for the fifth bargaining session on June 7. This meeting lasted a full day. According to Fry's notes, the company and union representatives met and the items discussed included work rules, attendance policy, grievance procedures, overtime, job descriptions, reporting for work allowances, the job classification committee, shift differential, savings plan, 401(k) plan, holidays, vacation, and paycheck distribution, and paydays. Agreement was reached on payday and paycheck distribution, reporting allowance, and most of the contract language for holidays. According to Fry, more progress could have been made at this meeting if Gatewood had provided the documents he promised at the March 27 meeting. This included revised contract language for the grievance procedure and overtime. Gatewood offered no reason for failing to provide these items, but said he would do so at the meeting set for June 22.

On June 12, the parties attended a Ohio Bureau of Employment Services meeting over securing unemployment benefits for the striking employees. Following this meeting, the parties attended a meeting convened by the Mahoning Valley Labor Management Citizens Committee in an attempt to seek a resolution to the dispute and end the strike. This meeting lasted about an hour. Both sides made statements to the committee and one of the committee members suggested that as a compromise would the Company meet with the Union three times a month. Gatewood replied that he was not going to agree to three meetings a month and let Fry take 5 years to reach an agreement. In yet another seeming admission that Respondent was not seriously negotiating for a contract, Fry responded that he could reach a contract in 6 days or 6 years. There were no negotiations over contract proposals made at this meeting and no agreement to end the strike was reached.[9]

On June 22, the parties met for their sixth negotiating session from 9 a.m. to 4 p.m. According to Fry's notes, the meeting ended an hour earlier than scheduled at the request of Gatewood. During this meeting the parties negotiated about the grievance procedure, overtime, job descriptions, shift differential, savings plan, vacation, leave of absence, and safety and health. They reached agreement on parts of the grievance procedure and vacation. The Company and Union also spent about an hour discussing a strike settlement, and concluded with the agreement that the Union would send a complete written proposal for ending the strike.

The seventh negotiating meeting was held July 6. Fry was the only witness commenting on this meeting and he contends that the Union refused to negotiate the contract, but wanted to negotiate a strike settlement agreement. The parties were unable to reach an agreement.

The meeting scheduled for July 27 did not take place. Fry wrote Gatewood on July 24 and canceled the meeting because Brace had to undergo surgery. He left the date of the next meeting up in the air because of Brace's illness. Gatewood responded to this letter for the Union. He objected to the cancellation of the meeting, noting Brace's surgery had been scheduled well in advance of the meeting. Gatewood also suggested that Respondent find a substitute for Brace or proceed without him as he had not taken an active role in negotiations. Coincidentally, Gatewood dropped out of negotiations at this time because he too became ill and required hospitalization. He was replaced by another union representative, Jack Baker, who was also replaced by yet another representative, Gary Steinbeck, before the next negotiating meeting.

Fry wrote the Union on August 9 stating that Brace was essential to him in negotiations and noting that he would resume negotiations at some point after September 5, the anticipated date of Brace's return to work. He left the exact date of the next meeting open. In his testimony, Fry indicated that there was only one other person than Brace in Respondent's employ who was possessed of the overall knowledge of Respondent's operation. Such knowledge was necessary for him to be able to adequately negotiate. This other person was required to be at the plant at all times in Brace's absence. I find this excuse for not meeting in August to be plausible and accept it.

6. Negotiations between respondent and the new union negotiator

Gary Steinbeck is a field representative for the Union and has been employed in that capacity for 5-1/2 years. He was assigned to the Calex negotiations in August and called Fry to set up a negotiating session. Fry told him that Brace was ill and he was not sure when he could set a date because he did not want to meet until Brace would be available. In a subsequent call, Fry indicated that Brace was coming back to work after Labor Day and they set September 8 as the next negotiating meeting. Steinbeck asked for more dates, but Fry said they would talk about it when they met on September 8. This meeting, the eighth session, lasted most of the day. At the meeting, Steinbeck asked Fry for as many dates as he could get in order to reach an agreement. Fry indicated that he would only meet two times a month. Steinbeck asked how they were going to get a contract meeting twice a month and Fry indicated he had just reached an agreement on behalf of another company meeting in this fashion. Negotiations for that agreement lasted 1 year and 2 weeks. According to Steinbeck, Fry told him that he could beat the unfair labor practice charge by meeting only once a month. Fry did not deny of this testimony.

Fry and Gatewood had not signed off on any prior agreements, such agreements from the Union's standpoint were kept in Gatewood's notes. At the September 8 meeting, Fry and Steinbeck went over these matters and Steinbeck rejected certain language which Fry asserted that Gatewood had agreed to. Fry testified that because of Steinbeck's actions in this regard, it was almost like starting over from scratch when Steinbeck took over for Gatewood.[10] According to Fry's notes, the parties spent most of the day reviewing the proposal for the benefit of Steinbeck. They agreed on length of service for vacation scheduling.

ment has merit for at least two reasons. One, to the extent that it engaged in infrequent bargaining, Respondent did bargain on at least two occasions during this period and it is not accused of bargaining in bad faith solely based on its actions during the period in question. Similarly, even if the bargaining obligations was tolled during the period of alleged misconduct, it does not excuse Respondent's actions before and after the period.

[9] I do not consider this meeting to be a negotiating session.

[10] Taking a portion of one negotiating meeting to familiarize Steinbeck with the status of negotiations does not excuse Respondent's dilatory conduct for the previous 7 months. *Raddison Plaza Minneapolis*, 307 NLRB 94, 96 fn. 13 (1992).

The next meeting was scheduled for September 25, and was to begin at 9:30 a.m. Steinbeck and the Union's negotiating committee were present for the meeting at the scheduled time and place. They were then advised that there was a problem with Fry's airplane and that he was not coming, so the meeting was canceled. Later that day, Steinbeck spoke with Fry and the meeting was rescheduled for October 6.[11] Steinbeck asked for more meeting dates in this conversation, but Fry would only agree to meet on October 6.

The meeting for October 6 did not take place. The meeting was canceled by Fry's secretary on October 2. She called and told Steinbeck that Fry had fractured his ankle. The meeting was subsequently rescheduled for October 11.[12]

The parties met for the ninth time on October 11. At this meeting, Steinbeck asked for additional meeting dates and for the first time, Fry agreed to meet three times in one month.[13] Steinbeck was still not satisfied and suggested meeting for a week straight. Fry's notes reflect that in addition to discussing the matter of meeting dates, the parties discussed union shop, dues-checkoff, nondiscrimination, and civil rights committee. They agreed on contracting out work, part of management rights, acquiring seniority, the probationary period, and permanent vacancies.

The 10th and 11th meetings occurred on October 23 and 24. Fry's notes reflect that on October 23, the parties discussed seniority, decrease in force within classifications, temporary vacancies, increase in force after decrease, and filling job vacancies. They agreed on job vacancies, temporary vacancies, wages for employees assigned to temporary vacancies, part of the grievance procedure, and shift preferences. These notes also reflect that on October 24 the parties discussed job injuries, decrease in force, increase in force, seniority, and deduction of seniority time. They agreed to recalls from layoff, posting of jobs, and loss of seniority. At the October 24 meeting, further meetings were scheduled for November 9 and 16. Steinbeck and the Union's committee were present to meet on November 9, but it was canceled by another problem with Fry's airplane. They rescheduled to meet on November 16. On November 16, Steinbeck showed up for the meeting only to be informed that Fry could not get to it because of bad flying weather. On this date Steinbeck wrote Fry a letter complaining about the cancellations and Fry's refusal to meet more often.

The parties met for the 12th time on November 20. The parties reviewed and corrected articles that had been retyped and resubmitted. They agreed on retention of seniority for voluntary layoff, and sections of the grievance procedure. The 13th, 14th, and 15th meetings were held on November 27, 28, and 29. On November 27, the parties discussed preamble, successor clause, management rights, and seniority. On November 28, the parties began with a lengthy discussion on temporary vacancies and seniority, and reached tentative agreement on those with the understanding that they would sign off on them when the language was retyped. They discussed decrease and increase in force. They agreed on shift preference. On November 29, the parties discussed bumping rights, the distinction between critical and noncritical jobs in all four departments and identified as many noncritical and critical jobs as possible in each department. There was considerable discussion of the amount of experience required to bump into a critical position in the event a layoff took place.

With respect to the issue of frequency of meetings, Steinbeck testified that at the meeting on November 20, he noted the previous cancellations to Fry and told him that they needed to set more meetings for December. Fry gave him one date for December, December 8. Steinbeck asked for more dates and Fry indicated he could only meet 2 days in December and he was going on vacation on December 18. Steinbeck also testified at the meeting on November 29 the Respondent agreed to meet on December 8 and 14, but refused to meet on any other days in December.

The December 8 meeting did not take place. Fry called Steinbeck on December 6 and canceled the meeting, saying his airplane was undergoing maintenance and would not be available that week. Fry suggested that they meet on December 14 and 15. The parties did meet on those days, bringing the total meetings to 17. On the substantive issues of negotiations, the parties discussed critical jobs and bumping rights further. There was agreement on intent and purpose, vacation, leave of absence, and hours of work articles of the contract. On December 15, there was further discussion about the critical and noncritical jobs in each department, decrease in force, recall after layoff, and voluntary layoff. There was agreement reached on voluntary layoff.

At these December meetings, Steinbeck asked to meet on more days in December, but was rebuffed by Fry, who refused to meet further in December. Steinbeck then sought meeting dates in January. Fry refused to set any dates in January until the conclusion of this unfair labor practice case, which was then set to be heard beginning January 12, 1996. After further requests by Steinbeck, Fry finally agreed to meet January 11 and 23, 1996. Fry canceled the January 11 meeting on that morning, stating that bad weather prevented him from flying to the meeting in his airplane.

On January 19, 1996, Fry called Steinbeck and said he was canceling the meeting for January 23, again because of weather. Steinbeck argued that they could not predict what the weather would be some 4 days hence. Fry said that if the weather was bad he could not fly his plane and he would not be there. Steinbeck continued pressing Fry, who relented and said he would drive if he could not fly, but that it was a 5-hour drive and they would have to start the meeting in the afternoon. Fry ultimately agreed to meet on both January 22 and 23. These were the 18th and 19th meetings. Fry's notes reflect that on January 22 there was further discussion of seniority time, loss of seniority, and the grievance procedure, and grievance committee. There was discussion of paid

[11] I do not question Fry's testimony about problems he encountered with respect to problems with his plane or with weather conditions which precluded him flying the plane to scheduled meetings. On the other hand, such excuses for failing to attend scheduled meetings do not excuse his continued refusal to set more than a very limited number of bargaining sessions nor do they explain why he could not fly commercially to Youngstown. As will be shown shortly, Fry canceled a number of meetings in the fall of 1995 at the last minute, causing at least a fair amount of inconvenience to Steinbeck and the members of the Union's employee negotiating committee. His lack of effort to seek alternate travel modes in those instances when either airplane problems or weather problems were the cause of the cancellations are further indications of a lack of a real desire or intention to reach an agreement with the Union.

[12] A minor question was raised in the evidence as to the exact nature of the injury to Fry, but there is no question but that he was incapacitated for a short period by the injury.

[13] The complaint in this proceeding issued on October 6, 1995.

and unpaid lunch and break periods, overtime, and job descriptions. There was initial discussion of wages. The notes reflect that on January 23 there was further discussion of lunch and break periods, scheduling of relief time, and wages. There was agreement on wages, incentive pay, and shift differential. There was discussion of a savings plan, health insurance, and holidays.

At these January meetings, Steinbeck asked for February dates and Fry agreed to meet on February 13 and 14, following the conclusion of this proceeding. As of the date of this hearing, Steinbeck listed the major issues still outstanding after a year of negotiations as described above. These issues were seniority, pensions, hospitalization insurance, a security clause, and job descriptions or classifications. According to Fry the parties by the date of hearing had signed off on about 75 percent of the contract. Although he concurs with Steinbeck that the seniority article is not yet fully agreed on, it is about 80 percent agreed on in his opinion. As noted, the parties had met 19 times in a full year of negotiations. They met only six times in the first 6 months of negotiations.

C. *Did Respondent's Conduct Evidence Bad-Faith Bargaining*

I have set forth above the parties' bargaining history to date of hearing. Included within the Respondent's statutory obligation to bargain in good faith with an intent to reach an agreement is the duty "to meet at reasonable times."[14] That language commands not only that the parties "meet," but that they do so as appropriate and without unreasonable delays. In the instant case, there was an immediate delay of almost 2 months after certification of the Union, before bargaining began. This delay was clearly the fault of the Union and it never blamed Respondent for it in its communications with unit members. However, the evidence also reveals that the initial contacts between Gatewood and Fry were cordial and in the absence of past experience with Respondent, the Union had no reason at the outset to fear that negotiations would not be conducted with due diligence. Such fear rapidly surfaced when Respondent canceled the first two scheduled bargaining sessions. A firm basis for the belief that Respondent had no intention of reaching a contract within any reasonable timeframe became apparent when Fry announced that he would not meet more than 1 day a month and rebuffed union requests for more frequent meetings. As I have found earlier in this decision, no rational reason was advanced for such a refusal to meet more frequently and to the contrary, the evidence only supports a finding that Arora instructed his consultant, Fry, to delay the negotiations and stretch them out for as long as possible to either avoid reaching agreement or undermining support for the Union or both.[15] Its strategy may be working to a degree as it offered testimony to the effect that about 40 unit members had crossed the picket line and returned to work. Because of the arbitrary and unreasonable refusal of Respondent to meet more than once a month and then only for 1 day a month until June, and because of its refusal to accede in any reasonable or rational fashion to the Union's constant requests for more frequent meetings, I find that it violated Section 8(a)(1) and (5) of the Act. See *Radisson Plaza Minneapolis*, supra at 96; *Caribe Staple Co.*, supra; *Barclay Caterers*, 308 NLRB 1025 (1992); *Crispus Attucks Children's Center*, 299 NLRB 815, 838 (1990); *Fern Terrace Lodge*, 297 NLRB 6, 17 (1989); *Cable Vision*, 249 NLRB 412 (1980); *Rhodes St. Clair Buick, Inc.*, 242 NLRB 1320 (1979); and *O & F Machine Products Co.*, supra.

I believe the strike of May 1 was clearly caused by Respondent's unfair labor practices. Respondent attempted to make the point that the strike authorization vote of March 18 was taken after only one negotiating session, evidently arguing that an unfair labor practice could not have occurred that early and that some other reason must have been behind the vote. I do not agree. By March 18, Respondent had only met with the Union once, had made it clear it would meet only once a month, and had canceled, without rescheduling, the second meeting. The strike authorization only gave the Union's negotiating team the right to call a strike if Respondent continued to delay negotiations. And that it did. When the parties met again on March 27, Fry announced he would meet only 1 day in April. When that meeting occurred, he announced he would meet only 1 day in May. The pattern of delay was clearly evident and the Union's strike to force Respondent to meet more frequently was clearly caused by Respondents unreasonable refusal to do so.[16] Respondent's assertions that the Union struck simply because it had not reached an agreement within its goal of reaching agreements within 90 days of certification is not persuasive. Had Respondent met with the Union with reasonable frequency, such an argument might prevail. However, at the snail's pace at which the negotiations were proceeding, all at Respondent's insistence, it was clear that a contract would not be reached by even the anniversary of the Union's certification.

Following the strike, Respondent's willingness to meet improved only to the point that it would agree to meet twice a month. This increased after the issuance of complaint here to only three times a month. It rejected the Union's offer to end the strike by meeting six times a month and thus prolonged the strike.[17] To make it clear that a frequency of at least that level would be necessary to get an agreement, one must only look at where the parties were after a full year of negotiation at Respondent's pace. Taking Fry at his word that 5 percent of the language of the contract had been agreed to does not mean a contract is close at hand when issues such as health insurance and pensions are still on the table. Respondent's agreement to meet three times a month is also just a continuation of Arora's arbitrary determination

[14] Sec. 8(d) of the Act.

[15] If Respondent argues that Fry was too busy with other clients to meet more frequently than once a month, its argument fails on two counts. First, it did not offer any evidence to support this claim. Second, the fact that an employer hires a busy negotiator is no excuse for its failure to meet at reasonable times. *Caribe Staple Co.*, 313 NLRB 877 (1994); *O & F Machine Products Co.*, 239 NLRB 1013, 1019 (1978); *Storall Mfg. Co.*, 275 NLRB 220, 238 (1985).

[16] *O & F Machine Products*, supra; *Cable Vision, Inc.*, supra.

[17] Respondent's frequent cancellations of meetings at the last minute during the fall of 1995 also contributed to prolonging the strike. Although Respondent had reasons for the cancellations, most were caused by problems with Fry's ability to use his private plane to attend meetings. These problems could have been eliminated if he chose to come to meetings by car or commercial flights. His cavalier attitude with respect to the importance of attending scheduled meetings could only serve to frustrate further an already very frustrated union negotiating team.

of how many times he will allow Fry to meet with the Union, as this is the reason given Steinbeck by Fry when he asked for more meetings in January 1996. Respondent's unlawful conduct continues.

CONCLUSIONS OF LAW

1. Respondent Calex Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act and has at all times since November 29, 1994, been the certified exclusive representative for purposes of collective bargaining of Respondent's employees in the following described unit:

> All full-time and regular part-time production and maintenance employees, including all remelt employees, press operators, packing and shipping employees, quality control employees, and all truck drivers, employed at the Employer's facility located at 2415 Wilson Ave., Campbell, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act since February 2, 1995, and continuing to date, by failing and refusing to bargain with the Union in good faith and by failing to meet with the Union at reasonable times for purposes of collective bargaining.

4. The strike by Respondent's unit employees which commenced on May 1, 1995, was caused by and prolonged by Respondent's violation of the Act set forth immediately above and is an unfair labor practice strike.

5. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall further recommend that Respondent be ordered, on request, to bargain with the Union over wages, hours, and working conditions of the employees in the above-described unit and, if agreement is reached, embody such agreement in writing. This obligation shall include complying with the Union's requests for more frequent bargaining sessions.

I shall recommend an extension of the certification year for a 10-month period to commence from the time the Respondent first begins to bargain in good faith with the Union. This takes into account the Union's delay in beginning negotiations

I shall recommend that Respondent be ordered, on receipt from the Union of an unconditional offer to return the striking employees to work, to reinstate the striking employees to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employees hired to replace them. In the event the strike has ended with an unconditional offer to return to work in the interim between the hearing and the issuance of the Board's final Order in this proceeding and Respondent fails to reinstate the striking employees, I recommend that it be ordered to do so and make them whole for any losses they may have suffered.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Calex Corporation, Campbell, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union in good faith by failing to meet with the Union at reasonable times for purposes of collective bargaining.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over wages, hours, and working conditions of the bargaining unit employees and, if agreement is reached, embody such agreement in writing. This obligation will include complying with the Union's requests for more frequent bargaining sessions. The certification year is extended to 10 months from the first time Respondent bargains in good faith with the Union.

(b) On receipt from the Union of an unconditional offer to return the striking employees to work, to reinstate the striking employees to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employees hired to replace them.

(c) Mail to each striking employee at his or her home address and post at its facility in Campbell, Ohio, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."